

Exhibit

2

(Responsiveness Summary)

**RESPONSIVENESS SUMMARY
FOR
COMMENTS RECEIVED ON THE CONSENT DECREE
BETWEEN
THE UNITED STATES OF AMERICA, THE STATE OF MISSOURI
AND
THE DOE RUN RESOURCES CORPORATION; THE DOE RUN RESOURCES
CORPORATION d/b/a THE DOE RUN COMPANY; AND
THE BUICK RESOURCE RECYCLING FACILITY, LLC,
CIVIL ACTION NO. 4:10-cv-01895.**

INTRODUCTION

This Responsiveness Summary has been prepared to present responses to comments received on the Consent Decree between the United States and the State of Missouri as plaintiffs and the Doe Run Resources Corporation, the Doe Run Resources Corporation d/b/a The Doe Run Company, and the Buick Resource Recycling Facility, LLC as defendants (collectively “Doe Run” or Defendants”). The Consent Decree was released for public comment from October 15, 2010 through December 14, 2010.

The initial public comment period for the Consent Decree was originally scheduled to end on November 14, 2010. Prior to that date, the United States received a request to extend the public comment period. In response to this request, the public comment period was extended for an additional 30 days to December 14, 2010. Through the close of the extended public comment period, the United States received written and oral comments on the Consent Decree from seven individuals or groups:

- Commenter No. 1¹
- Sue Hagan and Mick Sutton
- Missouri Coalition for the Environment
- Washington University in St. Louis, Civil Justice Clinic, Interdisciplinary Environmental Clinic
- Deron Gibbs, Iron County C-4 School District
- Honorable Bill Haggard, Mayor of City of Herculaneum

At the request of one of the commenters, a public meeting was conducted on December 9, 2010 in Herculaneum, Missouri to present a summary of the content of the Consent Decree and allow for oral public comment on the Consent Decree. The meeting was recorded. A transcript of the meeting was prepared and is included as part of Exhibit 1 to the Memorandum in Support of Joint Motion of the United States and Missouri to Enter Proposed Consent Decree

¹ The United States has chosen to redact the commenter’s name due to privacy concerns raised by the extensive personal health information provided in their comments.

(“Memo”). No written comments were submitted at the meeting. The Defendants read a statement into the record and one oral question was received from Mr. Deron Gibbs of the Iron County C-4 School District. This Responsiveness Summary includes the question received and the response.

A separate public hearing was held on November 9, 2010, to receive comments on two Administrative Orders issued by the United States Environmental Protection Agency (“EPA”) under the authority of the Resource, Conservation and Recovery Act (“RCRA”), which are part of the global settlement of this matter.² A transcript of the hearing was prepared and an excerpt containing comments relevant to the Decree is included as part of Exhibit 1 to the Memo. At the hearing, the Honorable Bill Haggard made a statement that included a comment regarding the Consent Decree. That comment and the response are included in this Responsiveness Summary.

The Responsiveness Summary is divided into two sections. Section I. addresses all of the written comments received regarding the Consent Decree. The written comments will be sorted by the author of the comment(s). The second section, Section II., addresses all of the comments regarding the Consent Decree received at the December 9, 2010 and November 9, 2010 public meetings.

A few of the comments received on the Consent Decree were expressed by more than one party. In the instance where comments were similar we direct the reader to the location within the Responsiveness Summary where the particular comment was addressed in the greatest detail. As such, the responses to comments offered in this Responsiveness Summary should be considered collectively. We attempted to strike a balance between repeating responses to similar comments, and providing a detailed response to each comment in a single location. This responsiveness summary has been prepared with the goal of assuring that the public clearly understands the position of the United States on issues raised in the comments received, and the rationale which supports the decision to move forward with entry of the Consent Decree.

² EPA finalized two Administrative Orders on Consent between it and Doe Run. The first is a new Administrative Order on Consent (*In The Matter of The Doe Run Resources Corporation*, Docket No. RCRA-07-2010-0031) addressing the cleanup of residential properties in the town of Herculaneum, Missouri. The second is a modification to an existing Administrative Order on Consent (*In the Matter of the Doe Run Transportation and Haul Routes Southeastern Missouri*, Docket No. RCRA-07-2007-0008) addressing the transportation of lead-bearing materials between Doe Run facilities in southeast Missouri.

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I. WRITTEN COMMENTS

A. Comments 1 through 4, Commenter No. 1

Commenter No. 1 submitted four written comments. Each of the four comments was similar in nature and therefore one comprehensive response is provided at the end of the comments.

The first comment was submitted on October 17, 2010 as follows:

I ATTENDED ALOT OF CAG MEETINGS OVER THE YEARS. EVEN WHEN THE EPA & OTHER GOVERNMENT AGENCIES GOT INVOLVED, THEY WERE LESS THAN HELPFUL.

THEY WOULD DEFEND DOE RUN. THEY WOULD PARROT THE SAME MESSAGE OVER & OVER AGAIN "THAT ONLY CHILDREN SIX YEARS OF AGE & YOUNGER WERE AT RISK."

THE DEADLY HEALTH EFFECTS TO ALL RESIDENTS RELEATED TO THE TOXINS THE ARE EXPOSED TO INCLUDING ARSENIC & CADMIUM HAVE NEVER BEEN ADDRESSED.

THE GREED OF THE OWNER & OFFICERS OF THIS COMPANY ARE LEGENDARY. THEY HAVE THUMBED THEIR NOSE AT NOT JUST THE LAW, BUT AT THE HEALTH OF ALL RESIDENTS. THEIR CORPORATE PROFITS AND THEIR PERSONAL FINANCIAL ENRICHMENT IS MADE AT THE EXPENSE OF OTHERS WITH THE HELP OF THE GOVERNMENT AGENCIES THAT DID NOT PROTECT ALL THE RESIDENTS OF THE COMMUNITY BREATHING AIR LACED WITH HEAVY METALS.

THE CITY OFFICIALS AT HERCULANUEM, THE EPA/OTHER GOVERNMENT AGENCIES NOR DOE RUN SMELTING DID NOT WARN MY PARENTS IN JANUARY 1986 WHEN THEY MOVED TO HERCULANEUM. IN FACT THE CITY OFFICIALS WOULD BRAG HOW DOE RUN SPONSERED SO MANY THINGS IN THE COMMUNITY.

IN 1986 IS PERIOD OF TIME JUST BEFORE DOE RUN GOT CONCERNED ENOUGH TO BUILD A NEW SMOKE STACK, & PUT IN THE BAG HOUSE THAT IS SUPPOSED TO FILER OUT THE SULPHUR DIOXIDE & TURN IN INTO SULPHURIC ACID. THE CONTAMINATION WAS VISIBLE IN THE AIR, YOU COULD TASTE IT IN YOUR RESIDUE OFF YOUR CAR EVERYDAY, AND MY PARENTS WERE TOLD TO ACCEPT IT AS A REALITY. THERE WAS A YELLOW CLOUD THAT LAID LIKE FOG IN THE AIR CHOKING THE ENVIRONMENT TO THE POINT THAT YOU DID NOT GO OUTDOORS.IT TASTED LIKE SUCKING ON A BOOK OF MATCHED, BECAUSE THE SULPHUR DIOXIDE WAS VERY THICK IN THE AIR. AND WHAT WE WERE NOT BEING TOLD THAT THERE WERE OTHER HARMFUL HEAVY METALS THAT CAME ALONG WITH THE SULPHUR...LIKE ARSENIC, ZINC, NICKEL, CADMIUM...AND THE LIST GOES ON & ON....

COMPLAINTS FELL ON DEAF EARS. LAWYERS STATED DOE RUN IS JUST "TOO BIG" FOR THEM TO GO UP AGAINST & THAT OUR GOVERNMENT (EPA/OTHER GOVERNMENT AGENCIES WERE ALREADY INVOLVED...)AND HAVE DECIDED ONLY CHILDREN 6 & UNDER ARE AT RISK....

BUT NO ONE, ATTORNEY'S, CITY OFFICIALS, GOVERNMENT AGENCIES, DOE RUN SEEMED TO CARE MUCH. THAT IS WHAT YOU LIVE WITH WHEN YOU HAVE A SMELTER IN YOUR COMMUNITY. DON'T LIKE IT, MOVE. MY PARENTS DID NOT HAVE THE MONEY TO MOVE.

DAD DIED 1-11-1988 (68 YEARS OLD) OF A HEART ATTACK, JUST A COUPLE WEEKS SHORT OF 2 YEARS AFTER MOVING TO HERCULANEUM, MO.

I MOVED TO HERCULANEUM 7-8-1991, I WAS 33 YEARS OLD.

MY MOM WAS STARTING TO HAVE MEMORY PROBLEMS SHE WAS 59 YEARS OLD IN 1991.

WE BEGAN GOING TO CAG MEETS AS SOON AS THE CAG WAS CREATED.EPA & OTHER GOVERNMENT AGENCIES WOULD DEFEND

DOE RUN & PARROT THE SAME MESSAGE OVER & OVER AGAIN THAT "ONLY CHILDREN SIX YEARS OF AGE & YOUNGER WERE AT RISK...". WHEN I WOULD ASK IF THEY EVER SEEN CONTAMINATION THIS BAD ANYWHERE ELSE, AT ANY OTHER TIME THE ANSWER WAS NO. THEN I WOULD ASK WHAT MEDICAL PRECIDENT HAS BEEN SET FOR AN OFFICIAL POSITION STATING THAT NO ONE ELSE IS AT RISK I WOULD BE TOLD THEIR RESEARCH WAS INCONCLUSIVE FOR ANYONE ABOVE SIX YEARS OF AGE....

I DON'T BUY THE THEORY THAT ONLY KIDS SIX & UNDER SUFFER.

IT IS A VERY SIMPLE FACTS THAT IF HEAVY METALS TO IN, IT IS DIFFICULT TO GET THEM OUT OF THE BODY.

AND NOW I KNOW NOT ONLY CHILDREN SIX YEARS OF AGE & YOUNGER WERE AT RISK BECAUSE AS PUBLISHED IN THE BLOOD LEAD RESULTS 2001 MY BLL WAS 55.

EPA & OTHER GOVERNMENT AGENCIES WOULD DEFEND DOE RUN & PARROT THE SAME MASSAGE OVER & OVER AGAIN AS PUBLISHED...."ADVERSE HEALTH EFFECTS MAY BE EXPECTED FOR THE FETUS IF MY BLL WAS 55...." I WAS NOT, NOR DID I INTEND TO GET PREGNENT. THEREFORE, WHEN I STARTED TO HAVE HEALTH PROBLEMS DOE RUN, CITY OFFICIALS, EPA OR OTHER GOVERNMENT AGENCIES & DOCTORES WOULD PARROT THE SAME MESSAGE OVER & OVER AGAIN "THAT ONLY CHILDREN SIX YEARS OF AGE & YOUNGER WERE AT RISK." AND THEY WOULD NOT EVEN TAKE MOM'S MEMORY PROBLEMS SERIOUSLY.

WELL THE EPA & OTHER GOVERNMENT AGENCIES ARE WRONG. THE POLLUTION HAS HAD HEALTH EFFECTS ON ALL RESIDENTS & SOME OF US PAID WITH OUR LIVES.

I WAS TREATED FOR DEPRESSION FOR 2 YEARS UNTIL I HAD ONE OF MY SLEEP ATTACKS

WHILE IN THE DOCTOR'S OFFICE. WHAT I WAS SUFFERING FROM IS NARCOLEPSY. I DID NOT HAVE NARCOLEPSY BEFORE BEING LEADED. I HAVE BEEN ON PILLS EVERY SINCE. THE SAME PILLS SOME THE CHILDREN WERE PUT ON FOR ATTENTION DEFICIT DISORDERD WHEN THEY WERE LEADED.

OCTOBER 2009 WHEN MISSOURI HAD THE MOST RAIN EVER ON RECORD BOTH MY & MOM'S HEALTH GOT WORSE. MY NARCOLEPSY IS WORSE, MY ATTENTION SPAN AT WORK IS WORSE, MY MEMORY IS GETTING WORSE.

FEB 2010 I HAD TO PUT MOM IN A HOME FOR ALZHEIMER'S, I'M IN NO CONDITION TO TAKE CARE OF HER ANY LONGER.

FOR YEARS, FAMILIES JUST LIKE MINE, NEAR DOE RUN'S FACILITIES HAVE BEEN EXPOSED TO UNACCEPTABLE LEVELS OF HARMFUL POLLUTION. THE \$72 MILLION SETTLEMENT WITH DOE RUN WILL NOT ADDRESS THE ADULT HEALTH ISSUES THE FAMILIES LIKE MINE HAVE HAD OR WILL HAVE IN THE FUTURE.

IT WILL NOT ADDRESS THE FACT THE EPA & OTHER GOVERNMENT AGENCIES DID NOT PROTECT ALL THE RESIDENTS &

NOT JUST THE CHILDREN 6 YEARS OLD & YOUNGER. IT WILL NOT ADDRESS SUCH ISSUES AS WHEN I AM NOT PHYSICALLY OR MENTALLY ABLE TO DO MY JOB I WILL BE OUT OF A JOB & LIVING ON THE STREETS.

MY NAME IS

MY WORK NUMBER

. I AM THE CHILD SUPPORT SPECIALIST FOR THE CHILD SUPPORT OFFICE IN HILLSBORO MISSOURI.

I I LIVE AT . AND & THINK IT SUCKS THAT THE GOVERNMENT WILL BE PAID OFF, JUST LIKE THEY WERE PAID OFF IN THE PAST WITH FINES & FEES, WHILE THE TRUE INJURED PARTIES (THE RESIDENTS) ARE LEFT TO SUFFER UNTIL THEY DIE.

On November 8, 2010, Commenter No. 1 submitted a second comment as follows:³

The DOE RUN SMELTER & OWNER IRA RENNERT encompassed OUR total existence. On a typical day, the sky was various colors of yellow or murky grey, depending on the pollution that was emitted out of the smokestack from the plant. On more than one occasion, the emissions from the smoke stack were so thick that a football game had to be halted because the announcer could not see the players on the field. AT NIGHT A SHINNY BLACK SUBSTANCE FELL FROM SKY. But this was normal for Herculaneum.

A grey dust lay on the pavement, trees and bushes along the roadway where the Doe Run trucks delivered lead ore to the smelter. Cars drove over the dust, tires brought it to the DRIVEWAYS, shoes tracked it into their homes. It got in the carpets, clothing, eventually even the beds. Over the years, this was accepted as merely a nuisance, causing no alarm. Residents assumed that surely if there was any real threat to their health from the dust, the company OR ATLEAST ONE OF THE MANY GOVERNMENT AGENCIES INVOLVED would alert them. After all they were the experts, right?

Over time some of the folks started wondering why lawns were always dying? WHY THE AIR SMELLED LIKE SULFUR? WHY THEIR MOUTHS TINGLE? why their throats and eyes burn? why the paint on the cars corroded? why THEIR MINDS SEEM TO WORK slow? why it was hard to focus THEIR ATTENTION? why it was hard to think? why they had memory problems? why were sleeping ALL THE TIME? why were they TIRED ALL THE TIME? WHY AFTER BEING LEADED THEY WERE HAVING NARCOLEPSY ATTACKS? why some of their neighbors died? why their feet & even the feet of their dogs &/or cats seemed burnt? if the pollution was taking the paint off of cars, what is it doing to the inside of your body & brain?

ATTENDING YEARS OF CAG MEETINGS pursuing information about the health PROBLEMS CAUSED BY environmental pollution only proved The more YOU LEARN the more questions YOU HAVE. Questions lead to MORE CAG meetings with the company denying any danger. government agencies parroting the same message over & over again "only children 6 years of age or younger were at risk".

Most of the residents sick & tired of being sick & tired all the time, now armed with scientific knowledge, knew that Doe Run's assurances rang hollow. AND ALL THE GOVERNMENT AGENCIES INVOLVED DID MORE HARM THEN GOOD parroting the same message over & over again... The smelter's repeated violations of air pollution rules JUST LENGTHEN THE PERIOD OF TIME OF EXPOSURE combined with findings of high levels of lead & OTHER HEAVY METALS. THE HEALTH problems of ALL RESIDENTS JUST KEEP GETTING WORSE. BUT THE GOVERNMENT AGENCIES INVOLVED JUST KEEP PARROTING THE SAME MESSAGE OVER & OVER AGAIN "ONLY CHILDREN 6 YEARS OF AGE OR YOUNGER WERE AT RISK".

AT THE CAG MEETINGS THE RESIDENTS OF HERCULANEUM KEPT PURSUING INFORMATION REGARDING THEIR HEALTH PROBLEMS WITH DOE RUN

³ Commenter No. 1 submitted the same comment letter twice on November 8, 2010. For the sake of completeness a copy of both letters is included in Exhibit 1 to the Memo.

REPRESENTATIVES & the government AGENCIES. BLOOD LEVELS WERE TAKEN HEALTH STUDIES WERE DONE. The testing of the frogs and critters in the local waterways confirmed what seemed to be shocking news to doe run & the government agencies: contamination due to lead, arsenic, sulfuric, cadmium & OTHER HEAVY METALS were dangerous to the point of being declared a state of emergency for all the residence of Herculanenum.

But even with this proof all this Doe Run tried to play down the seriousness of the situation. They used the classic tactics that dirty industries usually employ. first blame the victim: your house is too dirty;you don't wash your hands enough. Then deny they are the cause: the lead is from car exhaust;from your child's toy. Then doe run would question the researcher's findings or present their own unbiased research, which is always favorable. Then pit neighbor against neighbor (to divide and conquer): you keep pressing the issue and your neighbor will loose he's job at doe run:how is your neighbor going to pay his bills & provide for his loved ones without his good paying job? ... Meanwhile they stall for time, as the profits roll in, pay a fee or A pay tax, keep poisoning residents and the environment, waiting for the storm to fade away.... EXPOSURE TO THE HEAVY METALS JUST KEEPS GOING On & on. residents DELT with their HEALTH problems GETting WORSE, their loved ones health problems get worse & the struggling every DAY JUST TO FUNCTION, JUST TO REMEMBER AND SOME MORE RESIDENTS DIED....

Finally, after a long meeting, late at night, Jack Warden begged & finally convinced a visiting state environmental official to test the content of that all-pervasive grey DUSTS that covered everything. The findings were shocking TO DOE RUN & THE GOVERNMENT AGENCIES, BUT confirmed the RESIDENT'S fears. The sample tested 30% pure lead! Hundreds of time more concentrated then what is considered safe or legal per the government (but we all know no level of lead is safe). EXPOSURE TO LEAD & HEAVY METALS WAS MASSIVE THROUGH OUT THE TOWN. THE RESIDENTS THOUGHT That was it. JACK WARDEN HAS GIVEN DOE RUN & THE GOVERNMENT PROOF OF WHAT THE RESIDENTS HAD BEEN TRYING TO COMMUNICATE TO THEM FOR YEARS. NOW DOE RUN & THE GOVERNMENT had no choice. To protect the health of ALL THE RESIDENTS OF HERCULANEUM they HAVE BEEN GIVEN THE PROOF THAT LONG TIME EXPOSURE TO MASSIVE AMOUNTS OF LEAD & OTHER TOXIC HEAVY METALS. THEY WOULD HAVE TO TAKE ALL THE RESIDENTS SERIOUS ABOUT ALL OF THEIR HEALTH problems, NOT JUST CHILDREN 6 & UNDER.

WELL THE RESIDENTS WERE WRONG. THE GOVERNMENT JUST KEEP PARRIOTING THE SAME MESSAGE "ONLY CHILDREN 6 OR UNDER WERE AT RISK". DOE RUN PURCHEASED HOMES THREE-EIGHTHS OF A MILE FROM THE PLANT. even though jack warden proved what the residents had been saying all along & that all the residence in Herculanenum were at risk because the massive amounts of lead & other toxic heavy metals were all over the town.

IF YOU HAD CHILDREN OUT-SIDE OF THE BUY OUT ZONE, TOO BAD, NOT AT RISK. IF YOU HAD A CHILD 7 YEARS OLD OR OLDER, TOO BAD, NOT AT RISK. IF ONLY ADULTS LIVED IN YOUR HOUSEHOLD, TOO BAD, NOT AT RISK. NO MATTER HOW SICK THE RESIDENTS WERE. NO matter what proof was given. no matter what research was discussed. TOO BAD, only the children 6 or UNDER & three-eights of mile from the plant WERE AT RISK.

in the past, in little ways, doe run had been helpful: they'd occasionally replace one's lawn when it started looking sickly or repaint the car when the paint corroded. But now SINCE JACK WARDEN HAS GIVEN DOE RUN & THE GOVERNMENT PROOF DOE RUN STATES these little fixes weren't going to BE DONE ANY MORE. HOW DARE a resident show PROOF! BUT THIS PROOF WAS THERE ALL along. THE RESIDENTS COULD NOT GET DOE RUN OR ANY OF THE AGENCIES TO take them seriously or TEST WHAT WAS IN PLAIN SIGHT, ALL OVER TOWN, RIGHT IN YOUR FACE, FALLING FROM THE SKY. BECAUSE JACK WARDEN DID PROVE THAT THE company could have changed their smelting practices. They could have upgraded their machinery or the methods of transporting the ore (which was transported in trucks WITHOUT COVERS ON THE TOP OF THEM). DOE RUN COULD HAVE BUILD A BRIDGE FROM THEIR SITE TO THE NEARBY HIGHWAY & THE TRUCKS WOULD NOT HAVE TO GO THROUGH THE TOWN AT ALL. DOE RUN CHOOSE TO EXPOSE ALL THE RESIDENTS TO THE TOXIC LEAD & HEAVY METALS BECAUSE THEY COULD & BECAUSE THEY COULD GET AWAY WITH.

doe run would have "meetings" with the residents "one on one" where they would insult the residents. they would lick lead & state see it does not hurt me. they would let you know that doe run & it's owner ira rennert had no problem violating your constitutional, civil and human rights. They were intimidating, offensive & prejudice with their stereotyping that since you lived in Herculanum you were poor, un-educated & THEY HAD THE GOVERNMENT ON THEIR SIDE STATING ONLY 6 & UNDER WHERE AT RISK. DOE RUN WOULD MAKE SURE YOU KNEW THAT DOE RUN & IRA RENNERT'S moral, ethical beliefs and typically concerns of the ultimate ideas about life, purpose & death was THAT DOE RUN &/OR IRA RENNERT have the right to PERSONAL PROFIT OVER ANYONES CONSTITUTIONAL RIGHTS, PUBLIC HEALTH, human rights, civil rights & environment crimes. and their slurs, derogatory comments, jokes, offensive display of intimidatiOn towards women and the ageing is nothing short of discrimination, harrassment and display of their POWER over the way DOE RUN &/OR IRA RENNERT can force other people to live and die in their toxic waste. they would state what doe run or rennert donated MONEY WELL-publicized charities (schools, the firehouse, just to name two) THEY WOULD STATE doe run has enriched the LIVES OF the people in herculaneum, they employ herculaneum residents who are paid good. they would let you know that they (doe run & ira rennert) thought THE RESIDENTS were acting ungrateful. without doe run there would be no Herculanum town. Then doe run would question the researcher's findings or present their own unbiased research, which is always favorable. and the government agencies would just keep parrioting the same message "only children 6 & under are at risk".

my lead lever was up to 55, i have narcolepsy & attention disorder. I did not have narcolepsy or attention discorder before I was leaded. i have problems with my attention span, functioning every day, doing my job. all the doctors & hospitals parriot the same message "only children 6 & under or at risk"... per the government. so we stopped going to the meetings. i support my mom for approximately 20 years and watched her health & mind BE EATEN AWAY BY THE POLLUTION. i had to put mom in a home february of this year (2010). i could no longer take care of my own health problems, deal with her health problems & try to hold on to my job. Now, when I loose my job I'll be living in the streets until I die or get killed.

since all the publicity, many are trapped financially because they can't afford to leave since their

house values have plummeted. They are forced to continue living in the pollution. THE HEALTH DAMAGE IS ALREADY DONE & GETTING WORSE. it's hard to watch the ones you love struggle everyday with the health PROBLEMS until they die. it's even harder to be struggling yourself with health problems everyday, trying to hold down a job, knowing you will be suffering the rest of your life with health problems that will only get worse until you die OR UNTIL YOUR ARE KILLED.

*IRA RENNERT IS WELL KNOWN FOR PERSONAL PROFIT OVER PUBLIC HEALTH, constitutional rights, human rights, civil rights of other & environment crimes. RENNERT IS DIRECTLY RESPONSIBLE FOR SUFFERING & DEATHS OF PEOPLE LIVING in herculaneum or where ever he decides to have a business. ALTHOUGH THERE HAS BEN PUBLIC OUTCRY, COURT CASES, HEARINGS..... RENNERT's negligent practices will continue..... with a stable of lawyers stalling for change, ability to ignore human suffering, corporate welfare, paying fines, pay taxes, WELL-publicized charities & unbiased research ensure that all HUMAN & environment exposed to his businesses have a common fate: *death*.*

NO LAWYER WILL TAKE A LOT OF THE ADULT CASES BECAUSE THEY CAN'T WIN AGAINST IRA RENNERT'S STABLE OF LAWYERS & BECAUSE IT IS WELL DOCUMENTED THAT THE GOVERNMENT STATES ONLY CHILDREN 6 OR UNDER IS AT RISK.

so the government settled with doe run in herculaneum. the government collect fees &/OR taxes.

the injured residents health is already damaged & will only get worse until death.

IRA rennert will FILE FOR bankruptcy like he has done with other businesses IN the past.

IRA rennert will laugh all the way to the bank.

IRA RENNERT WILL KEEP SPREADING HIS ETHICAL BELIEFS & TYPICALLY CONCERNS OF THE ULTIMATE IDEAS ABOUT LIFE, PURPOSE & DEATH THAT HE HAS the right to PERSONAL PROFIT OVER ANYONES CONSTITUTIONAL RIGHTS, PUBLIC HEALTH, human richts, civil rights & environment crime & WILL KEEP displayING HIS POWER BY forcING otherS to live and die in their toxic waste. AND THE GOVERNMENT WILL HELP HIM AS LONG AS THEY CAN COLLECT FEES &/OR TAXES.

On November 10, 2010, Commenter No. 1 submitted a third comment as follows:

REQUEST A PUBLIC MEETING IN HERCULANEUM IN ACCORDANCE WITH SECTION 7003(D) OF RESOURCE CONSERVATION & RECOVERY ACT, 42U.S.C.6973;

THIS IS MY REQUEST FOR JUSTICE:

IT IS CRIMINAL, INHUMANE, & ILLEGAL WHAT DOE RUN, IRA RENNERT & THE GOVERNMENT AGENCIES HAVE DONE TO THE PEOPLE LIVING IN HERCULANEUM & OTHERS.

IF THIS DEVASTATION, BOTH HUMAN AND ENVIRONMENTAL, WERE A NATURAL DISASTER IT'D BE BAD ENOUGH.
THAT IT IS AN ACT OF MAN IS ILLEGAL & UNFORGIVEABLE

IRA RENNERT, DOE RUN & HIS RELATED COMPANIES IS THE WORST I HAVE EVER SEEN. THE OVERALL NEGLIGENCE & BLANTEN DISREGARD FOR THE ENVIRONMENT IS JUST HORRIBLE THEIR VIOLATIONS TO THE CONSTITUTIONAL, CIVIL, HUMAN RIGHTS OF OTHERS IS CRIMINAL. THE PROFIT THAT IRA RENNERT IS RECEIVING FROM THIS OPERATION WITH NO CONSCIOUSNESS, NO CORPORATE CONSCIOUSNESS TO THE SAFETY, WELFARE, OTHER'S RIGHTS OR THE LAW IS THE WORST I HAVE EVER SEEN. I CAN'T IMAGINE ANYTHING WORSE THAN THAT. I CHARACTERIZE DOE RUN & ITS OWNER IRA RENNERT AS MURDERERS. I DO NOT ACCEPT THAT SO MANY PEOPLE HAVE TO DIE BECAUSE IRA RENNERT WANTS HUGE PROFITS FOR HIMSELF.

A COMPANY & IT'S OWNER WHICH DOES NOT ADMIT ITS RESPONSIBILITY WHILE IT VIOLATES MY MOM, ME, OTHERS, THE ENVIRONMENT, THE LAW.....BESIDES BEING IRRESPONSIBLE, THEY ARE CRIMINAL. THE TRAGEDY OF HERCULANEUM & ALL THE OTHER PLACES IRA RENNERT HAS A BUSINESS OR DECIDES TO TRANSPORT, DUMP, DISCARD THE POLLUTION OF HIS BUSINESS IS DEVASTATED BY HIS POWER OVER THE WAY HE CAN MAKE OTHERS LIVE & DIE IN HIS TOXIC WAKE SO HE CAN CREATE AN INCOME FOR HIMSELF IS ILLEGAL, CRIMINAL & HE SHOULD PAY THE INJURED.

NO AMOUNT OF MONEY CAN EVER REPLACE THE LOST LIVES & DIMINISHED POTENTIAL FROM THOSE WHO WERE POISONED BY THIS CORPORATION & ITS PREDECESSOR. NO AMOUNT OF MONEY FROM ITS CRIMINAL OWNER, IRA RENNERT, CAN EVER CLEAR HIS NAME BEFORE MAN OR GOD. BUT I DO BELIEVE IRA RENNERT & DOE RUN SHOULD BE HELD RESPONSIBLE TO THE PEOPLE HE HAS INJURED & BEGIN TO PAY FOR THEIR CRIMINAL ACTIONS TO THE PEOPLE THAT WERE INJURED.

INSTEAD OF JUST PAYING A SETTLEMENT TO THE GOVERNMENT AGENCIES. THE SAME GOVERNMENT AGENCIES THAT DID NOT PROTECT THE PEOPLE OF HERCULANEUM. IRA RENNERT & DOE RUN SHOULD HAVE TO BUY HOMES AWAY FROM THE SMELTER FOR THE REMAINING PEOPLE IN HERCULANEUM, PAY HEALTH DAMAGES & PAY FOR VIOLATIONS OF THE CONSTITUTIONAL RIGHTS, CIVIL RIGHTS, HUMAN RIGHTS.

IT IS CRIMINAL THAT THE GOVERNMENT AGENCIES DID NOT PROTECT US. THEY MADE MONEY BY CHARGING DOE RUN FEES & PROLONGED OUR EXPOSURE TO THE TOXIC POISONS. AND NOW THE GOVERNMENT RECEIVES THE SETTLEMENT. NOT THE INJURED PEOPLE. NEEDLESS TO SAY, THE GOVERNMENT AGENCIES INVOLVED DID EVEN MORE DAMAGE TO THE PEOPLE OF HERCULANEUM THAN IRA RENNERT & DOE RUN. WE HAD TO BEG FOR TEST TO BE DONE. WE HAD TO SUE TO GET THE GOVERNMENT TO DO THEIR JOB. WE ATTENDED MEETING AFTER MEETING WHICH ONLY PROTECTED SOME OF THE PEOPLE. EVERYONE ELSE WILL HAVE TO JUST SUFFER UNTIL THEY DIE.....

IT WAS PROVEN TIME & AGAIN THAT DOE RUN & OWNER IRA RENNERT, OUT RIGHT VIOLATED HUMAN RIGHTS & ENVIRONMENT LAW. IT WAS PROVEN TIME & AGAIN DOE RUN & OWNER IRA RENNERT WOULD JUST PAY A FEE & KEPT POISONING THE PEOPLEPEOPLE OF HERCULANEUM. IT WAS PROVEN TIME & AGAIN THE DISREGARD THEY HAD FOR OTHERS & THE ENVIRONMENT.

SOME SAY HE IS A RELIGIOUS MAN. IF HIS RELIGION IS PROFIT OVER PUBLIC HEALTH, CONSTITUTIONAL RIGHTS, HUMAN RIGHTS, CIVIL RIGHTS OF OTHERS.....WHILE COMMITTING ENVIRONMENT CRIMES, PRODUCING UNBIASED RESEARCH, TO IGNORE HUMAN SUFFERING.....THEN I AGREE HE IS A RELIGIOUS MAN. BUT IF THAT IS HIS RELIGION, DOES THAT NOT VIOLATE MY RELIGIOUS RIGHT? MY RELIGIOUS BELIEF IS THAT I SHOULD BE ABLE TO LIVE LONG, LIVE HEALTHY, PROSPER & NOT BE LIVE NOR DIE IN SOMEONE ELSE'S TOXIC MESS.

HERCULANEUM PEOPLE NEED JUSTICE. IT IS CRIMINAL WHAT IRA RENNERT HAS DONE TO MY MOM, DAD, ME AND OTHERS. IT IS ILLEGAL TO LET IRA RENNERT GET AWAY WITH VIOLATING & KILLING OTHERS SO HE CAN REAP HUGE PROFITS FOR HIMSELF AT OUR EXPENSE. HE IS GETTING OFF CHEAP FOR ALL THE PEOPLE HE HAS INJURED & HE KNOWS IT WITH THE SETTLEMENT THAT AGREES TO PAY THE GOVERNMENT AGENCIES THAT FAILED TO PROTECT THE PEOPLE OF HERCULANEUM.

THE HERCULANEUM PEOPLE NEED HELP IN OUR PURSUIT FOR JUSTICE. WE NEED HELP WITH OUR HEALTH PROBLEMS. WE NEED HELP WITH HOMES AWAY FROM THIS TOXIC MESS & LET OUR BODIES/MINDS HEAL. WE NEED HELP WITH THE FINANCIAL PROBLEMS WE HAVE TODAY BECAUSE OF IRA RENNERT & DOE RUNS CRIMINAL ACTIONS IN THE PAST. AND WE NEED HELP WITH THE FUTURE FINANCIAL PROBLEMS & HEALTH PROBLEMS. WE WILL HAVE WE NEED HELP WITH REPRESENTATION TO GO UP AGAINST IRA RENNERT/DOE RUN & THEIR ARMY OF ATTORNEYS. WE NEED HELP IN REPRESENTATION AGAINST IRA RENNERT & DOE RUN FOR THE VIOLATIONS OF OUR CONSTITUTIONAL, CIVIL, HUMAN RIGHTS

On December 10, 2010, Commenter No. 1 submitted a fourth comment as follows:

REFER TO: United States, et al. v. The Doe Run Resources Corporation, et al., D.J. REF. 90-5-2-1-07390/1

*I attended the public meeting in Herculanum on December 9, 2010. I do not want to diminish what you have accomplished with the consent decree. Nor do I want to diminish Doe Run's agreement to perform response actions & payment of the Civil Penalty to resolve said violations. And due to the fact the focus of most of the people attending the meeting was the payment of penalty ... **THERE ARE STILL SERIOUS ISSUES NO BEING ADDRESSED:***

SLANTED SCIENCE:

*The Jefferson County Health Department (JCHD) participation in four blood-lead studies in Herculanum, Mo. Herculanum **Residents were assured that It would be virtually impossible to report incorrect results.***

BUT IN REALITY:

Doe Run has organized and funded virtually every blood "study" in Herculanum. and, as a result, has owned the lab data, it would be relatively easy to report incorrect results.

IN ADDITION, IN EVERY STUDY, DOE RUN HAS CHANGED AT LEAST ONE SIGNIFICANT ELEMENT IN THE ORIGINAL DESIGN OF THE STUDY:

- *labs used (changed in every study),*
- *control populations ,*
- *numbers of those tested per distance or proximity to smelter,*
- *number of total people tested,*
- *type of tests done,*
- *--etc-- ... ,*

-- THEREBY COMPLETELY ALTERING THE FINDINGS OF EACH SUCCESSIVE STUDY.

--It appears as though Doe Run has, in fact -- with assistance from the JCHD and the Missouri Department of Health -- deceived citizens and public officials as to the extent of lead poisoning in the community of Herculanum. The JCHD was aware of the results yet did little or nothing to protect the residents of Herculanum. It's clear to many why the JCHD is reluctant to assign blame -- they perhaps share responsibility for the decades-long deception.

FACT SHEET DECEMBER 2010 FROM PUBLIC MEETING IN HERCULANEUM ON DECEMBER 9, 2010:

Doe Run Will:

- *evaluate effectiveness,*
- *evaluate use,*
- *perform extensive sampling,*
- *--etc-- ,*

-- Doe Run & others have completely altered the findings, studies, evaluations ---etc---, in the past to make it appear that the results needed & agreed upon in past Decreed had been acheived. It sound as if Doe Run & others will still be in be able to alter what-ever is needed to make it appear they are acheiving and/or complying with the Consent Decree of 2010. Stricter oversight, review and **TRUE SCIENCE** is needed otherwise the decades-long deception will continue.

OTHER SUBSTANCES SPEWED FROM THE SMELTER & ARE EQUALLY TROUBLING:

- *Arsonic
- *Biochemical Oxygen Demand
- *Cadmium,
- *Carbon Dioxide
- *Carbon Monoxide
- *Copper
- *Chemical Oxygen Demand
- *Nitrate
- *Nitrous Oxides
- *Nickel
- *Oil & Grease
- *Particulate Matter
- *Sulfur Dioxide
- *Volatile Organic Chemicals
- *Zinc, to name a few....-- **THEREBY CREATING A DEADLY COCKTAIL.**

DOE RUN/IRA RENNERT & GOVERNMENT AGENCIES FAILED TO PROTECT ALL RESIDENTS OF HERCULANEUM:

THE NORMAL LEVEL OF BLOOD LEAD IS ZERO, AS THERE IS NO SAFE LEVEL OF LEAD

- *all residents exposed (not just 6 years & under) are at risk,
- *all residents exposed have Human & Civil Rights that were broken,
- *we should have been told when we moved to Herculanum that there still was a problem,

DATA SHOWED HIGH LEAD LEVELS IN HERCULANEUM:

IN THE HEALTH CONSULTATION FEBRUATY 26, 2002 EPA FRACILITY ID: MOD006266373.....CONCLUSIONS:

The blood lead data reviewed indicate the exposure have occurred, are occuring, and are likely to occur in the future; and short-term exposure are likely to have an adverse inpact on human health. Consequently, this site has been classified as an urgent public health hazard. Specifically, we conclude the following:"....**of the females of childbearing age in this**

*community tested for bll, **one has a blood level that could cause adverse health effects to her developing fetus if she became pregnant....:***

THE ABOVE STUDY WAS WRONG:

MY BLOOD LEVEL WAS 55 FOR THE ABOVE STUDY.

**After being mis-dignosed for two years I had an attack while in my doctor's office.*

Sleep study states I have **NARCOLEPSY*

**Barns Jewish arns Jewish Hospital-Lead Poisoning Unit states "lead not a health risk unless you are 6 years or younger",*

**Other substanstances spewed from the smelter makes a deadly cocktail,*

**Blood Specialist states lead leavel not above 60 so will let it come down on it's own, no Chelation Therapy,.*

WHAT IS NARCOLEPSY.....EXCESSIVE DAYTIME SLEEPINESS:

A persistent sense of mental cloudiness, a lack of energy, a depressed mood, or extreme exhaustion. Great difficulty maintaining their concentration. Memory lapses. Impossible to stay alert in passive situations, such as when waiting for the computer to change screens, conversations with clients/co-workers, meetings. Involuntary sleep episodes are sometime very brief, lasting no more than seconds at a time, an hour or two, or can be three days long. When I fall asleep for a few seconds while performing a task, such as taking notes, typing, photocopying, looking up procedures, driving. Awaken I continue to carry it through to completion without apparent interruption. During these episodes I cannot recall my actions but my performance is almost always impaired. My handwriting, for example, degenerate into an illegible scrawl, or it takes more time to complete a task. When I fall asleep for longer than a few seconds because of my mental cloudiness I must start the task over from the beginning. When an episode occurs while driving I get lost or almost have an accident. Awaken from suck unavoidable sleep I still feel extreme exhaustion, mentalcloudiness, lack of energy, lack of concentration, memory lapses.

WITH CATEPLEXY:

Sudden loss of muscle tone that leads to feelings of weakness and a loss of voluntary muscle control. Attacks can occur at any time during the waking period. Cataplectic attacks vary in duration and severity. The loss of muscle tone can be barely perceptible, involving no more than a momentary sense of slight weakness in a limited number of muscles, such as mild drooping of the eyelids. The most severe attacks result in a complete loss of tone in all voluntary muscles, leading to total physical collapse in which patients are unable to move, speak, or keep their eyes open. But even during the most severe episodes, people remain fully conscious, a characteristic that distinguishes cataplexy from seizure disorders.

The loss of muscle tone during a cataplectic episode resembles the interruption of muscle activity that naturally occurs during REM sleep. A group of neurons in the brainstem ceases activity during REM sleep, inhibiting muscle movement.

WITH SLEEP PARALYSIS:

Temporary inability to move or speak while waking up. Experiencing sleep paralysis resembles undergoing a cataplectic attack affecting the entire body. I set my clock at least one hour ahead of time because the alarm clock may wake me up but I am unable to move.

HALLUCINATIONS:

Hallucinations can accompany sleep paralysis or can occur in isolation when I am falling asleep or waking up. These delusional experiences are vivid.

I DID NOT HAVE NARCOLEPSY UNTIL I WAS LEADED:

When I tried to get a lawyer(s) to file against Doe Run/Ira Rennert I was told since I don't have a "...child 6 years or younger..." I don't have a case. Every "CAD" meeting I attended the government agencies stated the same thing. Well, they are wrong. Daily exposure in Herculanum will create a toxic overload in your body. Although children are primarily at risk, lead poisoning is also dangerous for adults. Lead is a very strong poison. Herculanum residents have been breathing in lead dust for a long time. And some of the poison can stay in the body and cause serious health problems. I take the same medication that some of the children that were leaded were medicated with.

I'M HAVING HEALTH PROBLEMS AGAIN:

Then in October 2009 the amount of rain that fell was a record. The smell of Sulfer was in the air again. I was leaded & got real sick again. My Medication for Narcolepsy has kept me functioning until I was re-leaded in October 2009. Ever since October 2009 I begin to have more & more of the Narcolepsy symptoms happening & the medication is not keeping me functioning. My doctore states he has given me all the test that he can. And that my Medication (ADDERAL XR) is Federally Controlled & is at the maximum amount. If I stop taking it I will sleep for days. Also have the worry of if my insurance will cover the medication when I have to re sign up for coverage every year. Or if/when I loose my job I won't be able to afford the medication.

BURDENS OF THE POLLUTED ENVIRONMENT & PROLONGING EXPOSURE CAUSED BY FEDERAL AGENCIES:**EXECUTIVE ORDER NO 19898**

Executive Order No 19898 States The Department of Justice is committed to address the cause of disproportionate burden. Herculanum is one of the afflicted communities that Federal agencies have contributed to prolonging the disparities by underenforcing laws & by failing to take other remedial steps. And that The Department of Justice is committed to addressing these concerns. You are my last hope. If I can't function I am going to loose my job at the Hillsboro Child Support Office (I Work for the State of Missouri). I did not have Narcolepsy before being leaded. And everytime I am releaded the Narcolepsy gets worse. I need any & all assistance/compensation I can get so I can buy a place to live away from the smelter, get treatment to get the poisons out of my body/brain, take off time from work so I can heal & if I

still need to be on the Narcolepsy medication compensation so I can afford the medication. I need Human Rights & Civil Rights filed against Doe Run's Owner Ira Rennert & Doe Run. I need whatever forms/paperwork is needed to file for any & all legal action against Ira Rennert, Doe Run and any/all government agencies that is appropriate. I need any & all paperwork to file for victims of crime funds, grants/funding, & any other assistance/compensation that is available.

Response to Comments 1 through 4:

Most of the issues raised in the comments have to do with health concerns encountered by Commenter No. 1 and their family as well as others in the Herculaneum, Missouri community and are not comments about the terms of the Consent Decree. While the commenter raises important issues, and we have forwarded the comments to appropriate health personnel, the purpose of this Consent Decree is to resolve specific violations that are alleged in the complaint filed in this case and address the harm caused by those violations. This specific Consent Decree is not the correct tool to address Commenter No. 1's health concerns or the alleged violations of civil rights and constitutional rights.

However, it should be noted that the EPA and the State have taken numerous actions to address the health issues associated with lead contamination in Herculaneum, including requiring the buyout of residents living immediately adjacent to the Herculaneum facility, cleanup of residential properties in Herculaneum, and issuing administrative orders to Doe Run to address the transport of lead concentrates to reduce the release of lead-bearing materials during transport and many other actions. Information on all of these response actions can be found in the information repositories, one of which is located at Herculaneum City Hall, 1 Parkwood Court, Herculaneum, Missouri. EPA's records indicate that the soil in the yard of the commenter's current residence was sampled in March 2002 and that excavation of the property was completed in April 2004 as part of the cleanup of residential properties in Herculaneum. EPA continued to monitor soil lead levels in previously excavated residential yards within Herculaneum. In 2009, the commenter's yard was resampled and the results were well below the 400 parts per million ("ppm") action level [level of concern] for lead. Therefore EPA has not required additional cleanup actions at this property.

Nevertheless, pursuant to a new Administrative Order on Consent signed by Doe Run on September 1, 2010 ("Soil AOC"), Doe Run will initially sample all residential properties within 1.5 miles of the Herculaneum lead smelter. In addition, all properties that have soil lead concentrations greater than 200 ppm will be sampled annually thereafter. After the lead smelter facility has ceased operation and the smelter facility is cleaned up, all residential properties within 1.5 miles of the facility will be sampled one last time. During any of these sampling activities if a property has soil lead concentrations greater than or equal to 400 ppm, the property will be cleaned up, assuming the property owner grants access to do the work.

With respect to the terms of the proposed Consent Decree, Commenter No. 1's comments appear to raise just two specific concerns: 1) the use of the civil penalty, and 2) a need for oversight of the Defendants' compliance with the terms of the Consent Decree. Through the first concern, Commenter No. 1 suggests that instead of paying a penalty, Doe Run should be required to buy the homes of the residents remaining in Herculaneum, pay health damages, and pay for

violations of Constitutional, Civil, and Human rights, or to otherwise address adult health issues of Herculanum residents.⁴ The United States believes that stiff civil penalties are appropriate and important as a means to deter violations of environmental laws by the Defendants and others in the regulated community. The issues raised by the commenter present certain problems that are not reachable in an action brought pursuant to the authority granted to EPA by Congress under federal environmental statutes, but which may properly be the subject of private litigation.

The instant settlement is predicated upon the requirements of applicable federal and state environmental laws. The injunctive relief required pursuant to the proposed Decree and the actions required pursuant to the new Soil AOC will significantly advance protection of human health and the environment. The Consent Decree represents the settlement of a disputed matter; there has been no finding of liability or the appropriate remedy for the violations (such as those suggested by Commenter No. 1). Given the relative importance of the remedy achieved by the Decree and the legal difficulties and delay which would attend a determination of liability, imposition of a civil penalty, and a ruling on injunctive relief, the United States and State continue to believe that this settlement is fair, reasonable and in the public interest.

In the second specific concern, Commenter No. 1 suggests that more oversight, review, and true science of Doe Run's efforts are necessary to make sure the Defendants are actually complying with the Consent Decree requirements.⁵ The United States believes that the Consent Decree provides adequate safeguards to ensure the Defendants' compliance, for example:

- The Defendants must periodically submit reports that are reviewed and, in most instances, subject to approval by the governments (see e.g. Decree ¶¶ 19-20, 28, 37, 39, 41, 43, 46, 51-52, 54, 106-107, 110, 112, 114-115, 119, 121-122, 128, 159, 161, and 176).
- Before the United States and the State will agree to terminate the Consent Decree pursuant to Section XXVII (Termination) of the Decree, the Defendants must demonstrate that they have complied with the provisions being terminated.
- Pursuant to Section XX (Information Collection and Retention) of the Decree, the United States and State retain all of their access and information-gathering authorities and rights. See Decree ¶¶ 226 and 231. EPA and MDNR regularly conduct on-site unannounced compliance inspections at regulated facilities and their oversight of compliance with the Decree may include on-site inspections.

⁴ *"INSTEAD OF JUST PAYING A SETTLEMENT TO THE GOVERNMENT AGENCIES. THE SAME GOVERNMENT AGENCIES THAT DID NOT PROTECT THE PEOPLE OF HERCULANEUM. IRA RENNERT & DOE RUN SHOULD HAVE TO BUY HOMES AWAY FROM THE SMELTER FOR THE REMAINING PEOPLE IN HERCULANEUM, PAY HEALTH DAMAGES & PAY FOR VIOLATIONS OF THE CONSTITUTIONAL RIGHTS, CIVIL RIGHTS, HUMAN RIGHTS."* See Commenter No. 1's Comment No. 3.

⁵ *"-- Doe Run & others have completely altered the findings, studies, evaluations ---etc---, in the past to make it appear that the results needed & agreed upon in past Decreed had been acheived. It sound as if Doe Run & others will still be in be able to alter what-ever is needed to make it appear they are acheiving and/or complying with the Consent Decree of 2010. Stricter oversight, review and **TRUE SCIENCE** is needed otherwise the decades-long deception will continue."* See Commenter No. 1's Comment No. 4.

- In the event that the Defendants fail to comply with any requirements of the Decree, the United States and State have recourse through Section XVII (Stipulated Penalties) of the Decree to seek stipulated penalties, and through Paragraph 211 of the Decree to seek any other remedies or sanctions available to the United States or the State.

Therefore the United States and State continue to believe that the proposed Consent Decree is appropriate.

B. Comment 5, Sue Hagan and Mick Sutton

On December 13, 2010, Sue Hagan and Mick Sutton submitted the following comment:

We would like to comment on the proposed Consent Decree with the Doe Run Resources Corporation. Although Doe Run's nefarious activities at its Herculaneum operation has been given full public scrutiny, far less attention has been paid to the smelter in Glover. As we live in the Glover area, we think the Corporation must be held responsible for damages done in the Glover region. Also, we request that the two large smokestacks in Glover be removed--this will not only demonstrate that Doe Run has no intention of reopening its faulty Glover smelter, but it will also remove the lights on the stacks which are contribution to unwanted light pollution as well as bat and bird collisions with the towers.

Response to Comment 5: The commenter presents issues concerning the former Glover smelter located in Annapolis, Missouri. This facility is no longer an operating smelter, however, Doe Run uses the Glover facility for storage of materials used in its operations at other Doe Run facilities. The commenter suggests that Doe Run should be responsible for damages done in the Glover region and should remove the two large smokestacks at the Glover facility. We are not aware of what damages the commenter is referring to in the Glover region since the commenter did not specifically identify any damages. However, the Consent Decree includes specific injunctive relief associated with the Glover facility to address CWA permit compliance issues noted in inspection reports and Discharge Monitoring Reports identified in the Complaint, including the evaluation of the effectiveness of reagents used in Glover wastewater treatment plant and the evaluation of the use of sodium sulfide to reduce thallium in the Glover wastewater treatment plant. See Decree ¶¶ 55-58, 233.g. The Glover facility is also included in the assessment by Doe Run to address water permit compliance issues. See Decree ¶¶ 29-49 (Decree Sections VI.A and VI.B); see also response to Comment 8. The Consent Decree does not preclude the governments from taking future actions to address other violations not covered by this Consent Decree. We understand the concern about light pollution and bat and bird collisions with the existing stacks and we have forwarded the comment to Doe Run to consider when making future decisions regarding the Glover facility.

C. Comments 6 through 11, Missouri Coalition for the Environment

On December 14, 2010, the Missouri Coalition for the Environment submitted the following six comments:

Comment 6: *Compliance Dates*

First, there are a number of compliance dates in the Consent Decree that are in the past such as the October 31, 2010 deadline for stabilizing and re-vegetating the containment berm around the Doe Run slag storage area at the Glover Facility. These may be intentional, however their appearance without explanation in a document that is not yet finalized is confusing.

Response to Comment 6: The parties spent several months negotiating all of the language and requirements of the Consent Decree. The United States and the State of Missouri believed that some of the work required by the Consent Decree should be performed sooner rather than waiting for the Consent Decree to be entered. As the commenter has noted, that meant that some requirements of the Consent Decree would need to be completed before lodging or entry of the Consent Decree. While this may seem unusual, the parties thought this was the best way to move forward on certain issues identified in the Consent Decree. To date, Doe Run has complied with the requirements of the Consent Decree. The Consent Decree does provide for the collection of penalties if Doe Run does not comply with obligations that occur prior to the effective date of the Consent Decree. See Decree ¶ 208.

Comment 7: *Lead Conveyance*

We are pleased to see the inclusion of provisions in 154 and 165 to require lead conveyors and handling mechanisms to be enclosed (and ventilated) in order to help reduce fugitive emissions at Doe Run facilities, reducing their impact on their downwind neighbors. This common sense provision seems overdue to protect public health and safety.

Response to Comment 7: We agree with the commenter.

Comment 8: *Site Specific Stormwater Management Plans*⁶

Regarding the implementation of the site-specific Stormwater Management Plans at the relevant Doe Run facilities, it seems that three years is overly generous to a company like Doe Run with global resources and access to expertise and capital, especially since it has left an unmatched legacy of contamination throughout our state. We request that once the plans are approved,

⁶ Although Missouri Coalition for the Environment refers to “site-Specific Stormwater Management Plans,” it appears they meant to reference the site-Specific Surface Water Management Plans (SWMPs). See Decree ¶ 46.b. The Decree does require Doe Run to develop and implement Stormwater Pollution Prevention Plans, which are not the same as the site-Specific SWMPs. The Stormwater Pollution Prevention Plans must be implemented in accordance with the rolling schedules in Appendix B, which require implementation to be complete for all facilities within seven months of the lodging of the Consent Decree. See Decree ¶ 46.a.ix. and App. B (last item in chart for each facility).

implementation be completed within 18 months with allowances not to exceed three (3) years from the date of approval for those portions of a Site-Specific SWMP that involve extensive capital improvements. The five years the draft Consent Decree allows enables Doe Run to drag its heels in delivering cleaner water to Missouri streams. With complex, major infrastructure and construction projects happening worldwide within three years, it is unlikely that any project at a Doe Run facility that would be somehow more complex.

Response to Comment 8: Under the Consent Decree, Doe Run will be implementing a multifaceted process to reach the Clean Water Act objective of the Consent Decree: compliance with all National Pollutant Discharge Elimination System (“NPDES”) permit limitations, known in Missouri as “Missouri State Operating Permits” or “MSOPs”. The multifaceted implementation process includes: surface water monitoring at all facilities covered by the Consent Decree, and underground water monitoring at the mine facilities, to ensure all sources of pollutants and contamination are accurately identified; development and implementation of storm water pollution prevention plans (SWPPPs) at all facilities; development and implementation of surface water management plans (SWMP) for all facilities, and underground water management plans (UWMP) for all mine facilities, to eliminate or reduce all contributions of pollutants and contaminants to waters before the wastewater treatment process; and treatment of remaining pollutants in wastewater to achieve compliance with MSOPs limits prior to discharge.

Doe Run believes that a significant amount of pollutant reductions may be attained through systematic and comprehensive operational control measures. The United States and the State of Missouri believe this is an appropriate and technically sound interim approach to achieving the final MSOPs limitations, i.e., removing sources of pollution before they contaminate water is a much more effective approach to achieving permit limitations than the use of treatment systems to remove pollutants from contaminated wastewater. Therefore, where appropriate, Doe Run should be allowed a reasonable but brief period of time to implement operational controls prior to installing additional wastewater treatment processes. A three year window for implementation of site-specific SWMPs should provide a reasonable period of time for Doe Run to complete monitoring and analysis and implement operational controls before installing additional, or upgrading existing, wastewater treatment processes.

The United States and the State of Missouri will review the site-specific SWMPs, pursuant to Paragraph 46.b. of the Consent Decree, to ensure each plan adequately addresses the pollutants of concern, sets forth appropriate control measures, and includes an appropriate compliance schedule for the actions to be taken. As part of that review process, the United States and the State of Missouri will ensure the implementation schedules are reasonable given the tasks to be performed and the equipment and infrastructure to be added. The three-year deadline for implementation of the site-specific SWMPs does not preclude a determination by the United States and the State of Missouri that earlier compliance is reasonably achievable based on the work to be performed at that facility.

Comment 9: *Other Impaired Streams Left Without Mitigation*

While Doe Run is, appropriately, required under the Consent Decree to mitigate damage it has caused to Bee Fork Creek, its water quality, and its aquatic community, there are no parallel

mandates in the Decree or elsewhere to undertake mitigation activities on any other streams the company has similarly impaired. This should be remedied as soon as possible.

Response to Comment 9: The Consent Decree includes several injunctive relief actions, including mitigation of impairments to Bee Fork Creek. See Decree ¶ 155 and Appendix I. The segment of Bee Fork Creek chosen as appropriate for mitigation under the Consent Decree is a segment that has pollutant contributions only from Doe Run facilities or operations. Other waters that may have impacts from Doe Run facilities or operations may also have other pollutant contributions from facilities or operations of other entities or from the same facilities but during the time period prior to Doe Run ownership. Inclusion of the Bee Fork Creek mitigation project in this Consent Decree was by agreement of the parties in settlement. This settlement does not preclude mitigation efforts outside the scope of this Consent Decree for other water bodies, where appropriate, by Doe Run or other contributing entities. On December 23, 2010, EPA approved a Total Maximum Daily Load (TMDL), pursuant to Section 303(d) of the Clean Water Act, issued by the Missouri Department of Natural Resources (MDNR) for the West Fork of the Black River to address impairments by nutrients (total nitrogen and total phosphorus). The West Fork of the Black River has also been listed as impaired from lead and nickel in sediment on MDNR's 2008 list of impaired waters under Section 303(d) of the Clean Water Act. Bee Fork Creek, to which Doe Run's Fletcher Mine/Mill Facility discharges, is one of several significant tributaries to the West Fork of the Black River. Several Doe Run facilities in addition to Fletcher Mine/Mill, as well as other sources, discharge to the segments of the West Fork of the Black River, or its tributaries, that are covered by the recently approved TMDL. Missouri also plans to develop and submit a TMDL, for EPA approval, to address impairments associated with lead and nickel impairments for the West Fork of the Black River.

Information on the TMDL for the West Fork of the Black River, Reynolds County, Missouri can be found at: <https://dnr.mo.gov/env/wpp/tmdl/2755-w-fk-black-r-tmdl.pdf>

Comment 10: Stipulated Penalties

We support the U.S. language on stipulated penalties. It is particularly wise to include violations of the latest transportation AOC in the stipulated penalties in this decree because of the experience with the most recent transportation AOCs in which Doe Run neglected to perform to the level it had agreed.

Response to Comment 10: We agree with the commenter.

Comment 11: Appendix J: Environmental Mitigation Projects

We support the purchase and retirement of SO₂ allowances. We also support the inclusion of school energy projects, and would further urge that those eligible projects include energy audits to help determine the most cost-effective investments schools can make to really save money on their energy bills now and into a future of escalating energy costs.

Given that some local school districts have reportedly recently purchased new school buses that might not need diesel retrofits, we suggest that the list of options for diesel retrofits include a way to improve emissions from tow boats and trains along the Mississippi River, even though

those are mostly privately owned. Perhaps a project could emerge for a 50%-75% match for diesel retrofits on private tow boats or trains that regularly travel through Cape Girardeau, Perry, Ste. Genevieve and Jefferson Counties. This would have the added benefit of leveraging private investment while helping to improve air quality. Under no circumstances should upgrades to Doe Run's own vehicles count as a supplemental project, though they should be encouraged outside of this Decree.

We also oppose the inclusion as a "supplemental" project the Environmental Management System (as well as geothermal heating units) for Doe Run Facilities. Clearly such a system will be beneficial to Doe Run and to its neighbors, however such investment does not belong in a section designed to attain community benefits outside of what would make Doe Run a better business. Doe Run's shareholders are the ones that should be pushing for it to be a better business since the benefits of smart investments accrue to them. It is neither the EPA's place nor the community's. The Environmental Management System is one such investment. However, it is not a "supplemental" project delivering community benefits and thus lacking, it should be removed from Appendix J and perhaps included elsewhere in the Consent Decree as a mandatory requirement or excluded entirely.

Response to Comment 11: The purpose of the Environmental Mitigation Projects listed in Appendix J is to mitigate the effects of Defendants' actions in the period during which the allegations set forth in the Complaint transpired. As part of each plan submitted, Defendants shall explain the manner in which the project will mitigate the effect of Defendants' prior actions. Doe Run will decide which mitigation projects it will conduct under the Consent Decree. EPA, in consultation with the Missouri Department of Natural Resources ("MDNR"), will review the project proposals and approve the performance of the project if it believes the project is an appropriate mitigation project. Paragraph 168 of the Consent Decree requires Doe Run to make all plans and reports prepared as required by Section XV (Environmental Mitigation Projects) of the Consent Decree publicly available without charge.

By utilizing an environmental management system to improve its operations or install more efficient systems or technology, Doe Run is able to mitigate harm caused by its previous actions, and the benefit inures not only to Doe Run, but also to the surrounding community. Ground source heat pumps (GSHP) installed on Defendants' own buildings will reduce energy usage and increase efficiency in the same manner as GSHP installed on community buildings. However, during its review and approval, EPA will encourage Doe Run to install GSHP on public buildings. The diesel retrofit projects must give preference to public fleets and Doe Run must adequately explain why money was not first allocated to a public fleet. Further, by retrofitting its own vehicles, Doe Run will reduce NO_x emissions in the affected communities.

D. Comments 12 through 19, Washington University in St. Louis, Civil Justice Clinic, Interdisciplinary Environmental Clinic

On December 14, 2010, Washington University in St. Louis, Civil Justice Clinic, Interdisciplinary Environmental Clinic submitted a letter containing the following eight comments. In addition the Clinic submitted an appendix which is referenced in its comment number six (comment number 17 in this Responsiveness Summary). The appendix is included with comment number 17 in this Responsiveness Summary.

Comment 12: *The Consent Decree should require Doe Run to incorporate comments from EPA and Missouri Department of Natural Resources into its water sampling, analysis and management plans. (Consent Decree ¶¶ 33, 35 and 41).*

The Consent Decree contains a process by which Doe Run is to ensure that it complies with the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387, in section VI, paragraphs 29-63. That process includes, in sequence, assessment⁷, planning⁸, and implementation.⁹ At the assessment stage, Doe Run must create an Underground Water Sampling and Analysis Plan (“UWSAP”)¹⁰ and a Surface Water Sampling and Analysis Plan (“SWSAP”).¹¹ The purpose of these plans is to gather data that will aid in developing plans to “reduce metals loadings associated with [Doe Run’s] CWA Facilities”¹² Both of these plans must be submitted to EPA and the State of Missouri, but only for review and comment, not for review and approval.¹³ The practical difference between the two types of review is explicit in the Consent Decree. Under review and comment Doe Run need not take any of EPA’s or Missouri’s comments into account.¹⁴ Only if Doe Run determines that its data are inadequate, which it determines in consultation with EPA and the State, do the comments have any real effect.¹⁵

At the planning stage, Doe Run must create management plans to address underground water and surface water. To address underground water, Doe Run must first submit a Master Underground Water Plan,¹⁶ and then submit plans specific to each of the ten sites for which Doe Run has CWA permits.¹⁷ Each of these plans is submitted for review and comment rather than review and approval.¹⁸ The process by which Doe Run is to address surface water is almost identical. Doe Run must prepare a Master Surface Water Management Plan¹⁹ and sitespecific management plans.²⁰ The surface water plans are submitted to EPA and Missouri for

⁷ See Consent Decree ¶¶ 32-40.

⁸ See *id.* ¶¶ 41, 42, 46(a), (b).

⁹ See *id.* ¶¶ 42, 43, 46(b), 47.

¹⁰ *Id.* ¶ 33.

¹¹ *Id.* ¶ 35.

¹² *Id.* ¶¶ 33, 35.

¹³ *Id.*

¹⁴ *Id.* ¶ 33 (“Defendants may revise the UWSAP in response to any comments provided by Plaintiffs.”) (emphasis added); *id.* ¶ 35 (“Defendants may revise the SWSAP in response to any comments provided by Plaintiffs.”) (emphasis added).

¹⁵ *Id.* ¶ 40.

¹⁶ *Id.* ¶ 41.

¹⁷ *Id.* ¶ 42.

¹⁸ *Id.* ¶¶ 41, 42.

review and approval under the formal process in section XII, paragraphs 140-47, in contrast to the underground water management plans and the sampling and analysis plans.

There are, then, a number of plans on which EPA and Missouri may comment, but which Doe Run is not obligated to modify in response to those comments. Doe Run need not even respond to comments in any manner at all. It is not clear what the review and comment procedure adds to the process, given that Doe Run can ignore any comments that are submitted. This is particularly of concern because Doe Run has a history of submitting timely, but inadequate plans under previous administrative orders. Doe Run has also disregarded government comments on its plans in the past.²¹

- *Doe Run should be required to respond to any comments that EPA or Missouri make on any of its plans.*

- *EPA and Missouri should have the last word in determining whether the data gathered under the UWSAP and SWSAP are adequate or whether additional sampling is needed.*

Response to Comment 12: Please also see the response to Comment 8. Doe Run is implementing a multifaceted process to achieve MSOPs limitations at each facility. As part of that process, Doe Run must adequately characterize pollution sources and their impacts on both underground and surface water at its facilities. Failure by Doe Run to accurately and completely perform underground or surface water monitoring may affect the effectiveness of its underground water and surface water management activities, but would not relieve Doe Run of the requirement to achieve compliance with its final MSOPs limitations.

In negotiating the Consent Decree, the United States and the State of Missouri consciously chose to not exercise approval authority over Doe Run's site-specific UWSAPs and SWSAPs for the specific reason that the burden should rest clearly on Doe Run to ensure the accuracy and completeness of the data upon which it relies in achieving compliance with its MSOPs limitations. Any comments offered by United States and/or the State of Missouri should be carefully considered by Doe Run; however, neither comments by the United States and the State of Missouri, nor the lack of comments, will shift the burden away from Doe Run for collection and analysis of the data necessary to implement effective wastewater controls and achieve MSOPs compliance.

For a similar reason, the United States and the State of Missouri specifically chose not to approve the underground water management plans (UWMPs) under the Consent Decree. At some of Doe Run's facilities underground water is pumped to the surface and released becoming part of the surface water discharge at that facility. Any actions Doe Run takes to prevent underground pollutant sources from contaminating surface water will assist Doe Run in meeting its final MSOPs limitations. Regardless of how effective Doe Run is in reducing pollutant

¹⁹ *Id.* ¶ 46(a).

²⁰ *Id.* ¶ 46(b).

²¹ See *In The Matter of The Doe Run Resources Corporation*, Docket No. RCRA-07-2010-0031 ("Soils AOC"), ¶ 36.

loadings to waters from underground sources, the responsibility for achieving compliance at the point of discharge, as required by the MSOPs, falls solely upon Doe Run.

Comment 13: *EPA should have authority to review and approve Doe Run's work plan to implement the final remedial action at the Herculanum Lead Smelter Facility. (Consent Decree ¶ 128)*

The planning for site remediation at the Herculanum Lead Smelter Facility consists of six steps.²² Under the process outlined in paragraph 128, EPA and the State have no input on the work plan that Doe Run creates to implement the final remedial action (the fifth step in the planning process). EPA and Missouri can give input on the schedule under which the work plan is implemented, but not on the underlying activities. The Remedial Action to clean up the Herculanum Lead Smelter Facility is likely to be complicated and involved. The implementation details will be important and the success or failure of the remedial activities will hinge on how closely the work follows the intent of the Remedial Action proposal.

- *EPA and Missouri should have the last word on the work plan that will implement the final Remedial Action.*

Response to Comment 13: The commenter outlines the process for addressing the remediation of the Herculanum Lead Smelter Facility. In this process the EPA and the State of Missouri will prepare the final decision document outlining the necessary Remedial Actions that will need to be performed to complete remediation of the facility. Since the Agencies are preparing the document for the final work to be performed the intent was to insure the work plan prepared by Doe Run would include all the necessary work to complete the final Remedial Action. The agencies understand the commenter's concern and recognize the need to be cognizant of this issue when moving through this process. EPA intends to closely monitor Doe Run's activities as the remedial action is implemented. Although EPA and the State do not directly approve Doe Run's work plan, EPA, in consultation with the State, does have the final authority to assess stipulated penalties if it determines that Doe Run failed to develop a work plan that implements the selected remedial action as required by the Decree. In addition, the State and EPA would not allow Doe Run to redevelop or reuse the facility property until the remedial action is completed.

Comment 14: *The Consent Decree is ambiguous and possibly misleading as to the potential future uses of the Herculanum facility. (Consent Decree ¶¶ 129 and 14(a))*

The overall intent of the Consent Decree is to halt operation of the current smelting operation at Herculanum, but to leave the property essentially unrestricted as to future uses. The Consent Decree mentions that Doe Run may process lead concentrate at the Herculanum site in the future.²³ Yet the section of the Consent Decree that requires Doe Run to halt operation

²² Those six steps are: (1) "Doe Run shall develop a work plan for approval by EPA and the State," (2) "EPA, after consultation with the State, will develop a Remedial Action proposal to address site contamination," (3) Public comment, (4) "EPA, after consultation with the State, will complete a decision document describing the selected Remedial Action," (5) "Doe Run shall develop a work plan to implement the final Remedial Action . . .," (6) "EPA and the State will coordinate with Doe Run to develop an appropriate schedule for completion of these activities." See Consent Decree ¶ 128.

of the Herculaneum smelter seems to contradict this expectation. Paragraph 14 states: “Doe Run shall: a. retire and permanently cease delivery to and processing of all lead sulfide ore concentrates at the Herculaneum Lead Smelter and all associated handling equipment by no later than December 31, 2013.”²⁴ Paragraph 14(a) gives the false impression that Doe Run will permanently cease processing of all lead sulfide ore concentrates, when that is not necessarily the case.

The public documents that EPA has released do not clarify this point. On EPA’s website, the Agency states, “Doe Run will: Shut down the acid plant and sintering machine and stop shipping lead concentrate to the Herculaneum facility by December 31, 2013.”²⁵ In its press release on the settlement, EPA made a similar statement: “Doe Run has made a business decision to shut down its lead smelter in Herculaneum, Mo., by Dec. 31, 2013.”²⁶

The current lead smelting process will cease, but another lead extraction process may take its place.²⁷ The process will change, but the input to that process will not; lead ore may continue to arrive by truck. Trucking lead ore concentrates to the Herculaneum site has been a source of lead contamination in the community for decades.²⁸ The public should be put on notice that the Consent Decree does not address all sources of past contamination, especially in light of the opening paragraphs, which seems to give the contrary impression.

• *EPA should make it clear that Doe Run’s future use of the Herculaneum site may involve the processing of lead concentrates.*

Response to Comment 14: The commenter is correct in that lead concentrates may be transported to a facility in Herculaneum, Missouri in the future after the shutdown of the lead smelter. The intent of the language in the Consent Decree was to indicate that the Herculaneum lead smelter facility will shut down by December 31, 2013, and no further lead concentrates will be transported to the lead smelter facility. A new facility may be constructed in Herculaneum for lead processing, that is not known at this time. And this new facility may receive lead concentrates, again an unknown. Therefore, the commenter is correct that it is possible that lead concentrates may be transported to a new facility in Herculaneum, Missouri in the future. However, there is currently a new bridge under construction that would allow the transport of the

²³ *Id.* ¶ 129 (“Following the cessation of operations required by Paragraph 14 of this Consent Decree, Doe Run shall not transport lead concentrate to the Herculaneum Lead Smelter Facility unless and until the Remedial Action required by this Section and Appendix E (Financial Assurance for Herculaneum Lead Smelter Facility) of this Consent Decree is deemed complete by EPA and the State.”).

²⁴ *Id.* ¶ 14(a).

²⁵ EPA, *Doe Run Resources Corporation Settlement* (Oct. 8, 2010)

<http://www.epa.gov/compliance/resources/cases/civil/mm/doerun.html> (last visited Dec. 14, 2010).

²⁶ EPA, *North America’s Largest Lead Producer to Spend \$65 Million to Correct Environmental Violations at Missouri Facilities* (Oct. 8, 2010) <http://www.epa.gov/compliance/resources/cases/civil/mm/doerun.html> (follow “Press Release” hyperlink under “Doe Run Resources Corporation Settlement Resources”) (last visited December 14, 2010).

²⁷ *Doe Run is now deciding whether to locate another lead extraction technology at the same site. Leah Thorsen, Lead smelter in Herculaneum set to close in 2013, Saint Louis Post-Dispatch, Oct. 10, 2010, at A24.*

²⁸ *See In The Matter of The Doe Run Transportation and Haul Routes Southeastern Missouri, Docket No. RCRA-07-2007-0008, (“Transportation AOC”) ¶¶ 20-45.*

lead concentrate materials to bypass the residential areas of Herculanum. The new bridge is expected to be completed prior to the construction of any new lead processing facility in Herculanum. In addition, the agencies would require the lead handling at any new facility to be completely enclosed under negative pressure, thus significantly reducing the impacts to the surrounding community of the lead concentrate materials at the new facility. See Decree ¶ 165 and Appendix H. Also this new facility and its associated emissions would need to comply with all regulatory requirements, including facility siting and permitting issues, applicable at that time.

Comment 15: *The Soils AOC should be incorporated into and enforceable under the Consent Decree. (Consent Decree ¶ 136)*

The Consent Decree incorporates only one of the Administrative Orders under which Doe Run is to address contamination in the vicinity of the Herculanum Lead Smelter. Paragraph 136 incorporates by reference the Administrative Order on Consent, In the Matter of The Doe Run Transportation and Haul Routes, Southeastern Missouri, Docket No. RCRA-07-2007-0008 (“Transportation AOC”), and the modification of that order. Incorporation of the Transportation AOC simplifies enforcement of its terms and the Coalition supports its inclusion. In addition to the amended Transportation AOC, EPA and Doe Run are also now entering into another Administrative Order on Consent, In the Matter of The Doe Run Resources Corporation, Docket No. RCRA-07-2010-0031 (“Soils AOC”). It is not clear why the Soils AOC is not also incorporated into the Consent Decree.

- *The Consent Decree should also incorporate by reference the Soils AOC.*

Response to Comment 15: The EPA does not typically incorporate Administrative Orders into judicial enforceable Consent Decrees. As the term implies, Administrative Orders are generally administered by the EPA and not a federal district court. In the case of the Transportation AOC, since there had been prior violations of this Order, the EPA believed that incorporating the Transportation Order under the Consent Decree would expedite the handling of, and help deter, any future violations. The Soils AOC is a new Administrative Order issued by EPA and the administration of this order will be overseen by the EPA.

Comment 16: *Mitigation of Bee Fork Creek should include the 0.3 mile segment immediately above the 8.5 mile segment identified in the Statement of Work. (Consent Decree, Appendix I)*

One component of additional injunctive relief that Doe Run is obligated to perform under the Consent Decree is a mitigation project for Bee Fork Creek, as specified in Appendix I.²⁹ The Statement of Work in Appendix I identifies a number of activities, including sampling, assessment, sediment removal, stream bank stabilization, and in-stream habitat improvements, that Doe Run is to perform to address the impairments to the stream for which the Fletcher Mill and Mine Facility is responsible. The 8.5-mile segment of the stream to which the work would apply does not, however, extend to “the most upstream inputs from the Fletcher Mine/Mill complex to its confluence with the West Fork of the Black River,” as Appendix I indicates.³⁰

²⁹ Consent Decree ¶ 155; *id.* Appendix I (Statement of Work for Bee Fork Creek Mitigation).

The Missouri 2008 303(d) impaired waters list includes a 0.3-mile section of the stream immediately above the 8.5-mile segment.³¹ The 303(d) list identifies the pollutant impairing this upstream segment (WBID 2760U-01) as “toxicity” and the source as Fletcher Mine.³² Because the two connecting segments suffer the same impairment, from the same source, and given that pollutants unaddressed in the upper section would continue to contaminate sediments in the lower treated section, the upper segment (approximate upstream coordinates of latitude 37.4415 and longitude -91.0942) should be added to Appendix I, for a total stream length of 8.8 miles to be mitigated. It would also be prudent to include sampling and assessment of the West Fork of the Black River below the mouth of Bee Fork Creek to ensure that there has been not been, and will not be during the mitigation, migration of toxic materials into the West Fork.

- *The Statement of Work for Bee Fork Creek Mitigation (Appendix I) should include the 0.3-mile section of the Bee Fork Creek immediately upstream from the 8.5 mile portion which is currently addressed in the Statement of Work.*
- *The Statement of Work for Bee Fork Creek Mitigation (Appendix I) should include sampling and assessment of the West Fork of the Black River downstream from the outlet of Bee Fork Creek.*

Response to Comment 16: Please also see the response to Comment 9. The parties agreed in settlement that the classified portions of Bee Fork Creek would be subject to stream mitigation. The unclassified portion of Bee Fork Creek, the 0.3 mile segment, is not directly subject to mitigation, but will benefit from other activities by Doe Run under the Consent Decree, including the implementation of a stormwater pollution prevention plan at the Fletcher Mine/Mill Facility, implementation of underground and surface water management plans, and adherence to final effluent limitations in the facility’s MSOP.

Sampling of the West Fork of the Black River was not included as part of the Bee Fork Creek mitigation project under the Consent Decree. However, a TMDL was recently issued and approved to address nutrient impairment in the West Fork of the Black River, and Missouri plans to develop an additional TMDL for the West Fork of the Missouri River to address lead and nickel impairments. MDNR stated in the TMDL for nutrients that future stream monitoring is planned to evaluate the stream condition and determine if water quality standards are being met. In addition, Missouri’s Resource Assessment and Monitoring Program within the Missouri Department of Conservation monitors streams in Missouri on a five to six year rotating schedule. Any reliable monitoring data will likely be evaluated in the development process for the West Fork of the Black River TMDL to address lead and nickel. The public will have an opportunity to comment on that draft TMDL prepared by MDNR.

³⁰ *Id.* Appendix I, section I; see, generally, CWA § 303(d), 33 U.S.C. § 1313(d).

³¹ *Final 2008 Missouri 303(d) List*, <http://www.dnr.mo.gov/env/wpp/waterquality/303d/2008/2008-303d-final.pdf> (last visited Dec. 14, 2010).

³² *Id.*

Comment 17: *The Consent Decree does not bar subsequent action on streams other than Bee Fork Creek that have been impaired by Doe Run's operations, and EPA should address those streams by later action.*

In addition to Bee Fork Creek, which is addressed under the Consent Decree, Doe Run has polluted and impaired many other Missouri streams which are not addressed. Nearly every Doe Run facility with a National Pollutant Discharge Elimination System ("NPDES") permit has caused such damage to the water quality and aquatic life of streams receiving the company's processing or stormwater discharges that those streams have been placed on multiple 303(d) impaired waters lists. It may only be lack of monitoring data that has allowed those few other streams receiving Doe Run discharges to evade the 303(d) list to date.

In some cases, standard Water Quality-Based Effluent Limits ("WQBELs") have been developed for facilities' NPDES permits, although this has been done without reference to or use of instream water quality data. Even so, the facilities have been given schedules of compliance allowing them to continue operating under the high limits granted under previous permits for three years from the effective date of the new permit (in nearly all cases 2009 or 2010) before the WQBELs are applied. Water quality in the receiving streams will, then, derive no benefit from these more restrictive limits for at least two years.

Total Maximum Daily Loads ("TMDLs") have been approved or are being developed on some of the impaired streams. None of these, however, go further in addressing water quality issues than the NPDES permitting process, through calculation of waste load allocations for use in determining future pollutant limits in wastewater and stormwater discharges. While some TMDLs discuss the need for isolating and stabilizing pollutant sources, such as tailings piles, from surface water flow, none does more than suggest that, through unspecified means and at some future time, steps be taken to remedy the damage that has already occurred to stream sediments, damage that will continue to produce toxic effects to aquatic life for years to come.

We understand that there may be other potentially responsible parties ("PRPs") that have contributed to pollution in these other streams, whereas Doe Run is the only PRP for the pollution at Bee Fork Creek. We appreciate that adopting this strategy may have made realization of this Consent Decree much more timely than could otherwise be the case. But the impaired waters and polluted sediments remain. We urge EPA to ensure not only that those streams are protected in the future, but that Doe Run addresses the pollution that it has caused to date.

- *EPA should ensure that Doe Run mitigates all of the environmental damage it has caused Missouri streams and pursue action to require Doe Run to address all of the streams listed in the Appendix to this letter.*

Appendix. Streams left without mitigation

While Doe Run is, appropriately, required under the Consent Decree to mitigate damage it has caused to Bee Fork Creek, its water quality, and its aquatic community, there are no parallel mandates in the Decree to undertake mitigation activities on any other streams the company has similarly impaired. These streams include, by pollutant source:

Doe Run Brushy Creek Mine/Mill (MO-0001848) and Doe Run West Fork Unit Facility (MO-0100218)

West Fork of the Black River (WBID 2755). 31.7 miles impaired by nutrients, on the Missouri 303(d) list since 1998, and 1.3 miles impaired by lead and nickel, on the 303(d) list since 2008. The West Fork Unit Facility has been identified as a source of the nutrients, as well as lead and nickel in the sediments. The Brushy Creek Mine/Mill and Fletcher Mill/Mine are also considered potential sources of nutrients. The current NPDES permits for both facilities have high interim limits, with water quality-based effluent limits (WQBELs) due to be effective in 2013. A draft Total Maximum Daily Load (TMDL) for nutrients is currently on public notice to develop waste load allocations (WLAs) and no doubt stricter permit limits; no stream remediation is included in the TMDL. No TMDL for nickel and lead is yet scheduled.

Doe Run Buick Mine (MO-0002003)

Strother Creek (WBID 2751 and 2751U-01). Two segments totaling 3.1 miles impaired by lead, nickel, zinc, and arsenic, on the 303(d) list since 2006 (zinc) and 2008. (Note that the Statement of Basis for the Buick Mine permit, dated 4/15/10, states that all 7 miles of the classified segment, as well as the 1.0-mile unclassified segment, are impaired.) The permit has high interim limits, then standard WQBELs effective in 2012. No TMDL is scheduled.

Doe Run Glover Smelter site (MO-0001121)

Big Creek (WBID 2916). 4 miles impaired by metals, on the 1998 and 2002 303(d) lists. A TMDL was approved 2/17/2006, with WLAs effective in permit as of 3/23/10. No remedial actions were required or taken on the impaired streams, apart from work done in 2001 to isolate slag piles from local hydrology.

Scoggins Branch (WBID 2916U-01). 0.5 miles, on the 303(d) list since 2008, impaired by cadmium and zinc. No TMDL is scheduled.

Doe Run Herculaneum Smelter (MO-0000281)

Mississippi River (WBID 1707) and Joachim Creek (WBID 1719). 5.0 miles of the Mississippi River impaired by lead and zinc, on the 303(d) list since 1998. A TMDL recently submitted for approval to EPA extends the impairment to include the Joachim Creek (WBID 1719) watershed. The TMDL develops WLA for the NPDES permit, which expired in 2008, but does not require any remediation for Joachim Creek or the Mississippi River.

Doe Run Indian Creek Mine Tailings site (MO-00133221)

Goose Creek (WBID 2010). Stormwater discharge from mine tailings as well as from soil deposited on the site from remediation projects elsewhere. The permit limits (WQBELs) were calculated without instream data, which appears to be unavailable.

Doe Run Lead Belt Material Company (MO-ARAR012)

Flat River Creek (WBID 2168 and 2168U-01). 6.3 miles impaired by zinc, cadmium, and lead, on 303(d) list since 1998. The ARAR, which went into effect in 2003, required only monitoring for these metals. According to the TMDL approved in 2010, that rather modest monitoring requirement was never met; yet the TMDL continues to require nothing more of Doe Run. The TMDL further suggests, but does not require, that stream remediation be considered in the future.

Doe Run Leadwood – Eaton Tailings Dam (MO-ARAR011)

Big River (WBID 2080) and Eaton Branch (WBID 2166). Up to about 50 miles of Big River and 0.9 miles of Eaton Branch impaired by zinc, lead, and cadmium, on the 303(d) list since between 1998 and 2008 (depending on pollutant). The ARAR, which went into effect in 2003, required only monitoring for these metals. According to the TMDL approved in 2010, that requirement was never met; yet the TMDL continues to require nothing more of Doe Run. The TMDL further suggests, but does not require, that stream remediation be considered in the future.

Doe Run Sweetwater Mine/Mill (MO-0001881)

Logan Creek (WBID 2763) and Sweetwater Creek (WBID 2764). Discharge from milling and mining operations and stormwater discharge. Logan Creek is a losing stream. The permit has high interim limits, then standard WQBELs, calculated without instream data, to be effective in 2013.

Doe Run Viburnum (MO-0000086)

Courtois Creek (WBID 1943), Indian Creek (WBID 1946), and Tributary to Indian Creek (WBID 3663). A total of 4.4 miles impaired by lead, zinc, and other metals, on the 303(d) list for at least one of these pollutants since 2002. The permit has high interim limits, then standard WQBELs, calculated without instream data, to be effective in 2012. A TMDL was approved in 2010 which sets WLA but requires no remediation actions for the streams.

Doe Run Viburnum Mine #35 (Casteel) (MO-0100226) and Doe Run Buick Resource Recycling Facility (MO-0000337)

Crooked Creek (WBID 1928 and 1928U-01). Two segments totaling 8.7 miles, on the 303(d) list since 2006 and 2008, respectively, impaired by cadmium and lead. Permit MO-0100226 has high interim limits, then standard WQBELs, calculated without instream data, to be effective in 2013. Permit MO-0000337, which expired in 2007, has very high metals limits. No TMDL is scheduled.

Response to Comment 17: Please also see the response to Comment 9. We agree that the Consent Decree does not require or prevent actions to address the impaired streams identified by the commenter.

Comment 18: *There should be public notice and comment on all plans that Doe Run submits for completing the federally directed Environmental Mitigation Projects. (Consent Decree ¶ 166 and Appendix J, Section I.A)*

Under paragraph 166, Doe Run is to plan and complete federally directed Environmental Mitigation Projects (“EMP”) whose purpose is to mitigate the effects of Defendants’ actions in the period during which the allegations set forth in the Complaint transpired.³³ Doe Run is responsible for submitting a plan for each of the EMPs that it selects to fulfill this obligation.³⁴

The plan descriptions in Appendix J are bare specifications that will require a substantial amount of elaboration. Retrofitting diesel combustion engines with cleaner emission technology, for example, is doubtless a beneficial goal.³⁵ However, the recipients of the retrofitting, the type of technology chosen, and the training and infrastructure that will be provided all significantly affect the impact of the project. The public can expect to benefit from each of the EMPs. In the Clean Diesel Retrofit Project, the benefit will be reduced air emissions. The public should be given the opportunity to weigh in on important aspects of the implementation plans that will affect how much they benefit.

For instance, one of the implementation decisions that will inevitably arise in the context of retrofitting is whether to equip more vehicles with less expensive technology or fewer vehicles with more effective technology. The public has a legitimate interest in how that decision is made. Given the skeletal project outlines in Appendix J, the plans that Doe Run develops to implement EMPs will contain the real substance of what is to be accomplished. While we appreciate that the plans Doe Run submits for EPA approval are to be made publically available,³⁶ we also believe that a period of public notice and comment is appropriate.

In addition to the mandatory and optional EMPs that are specified in Appendix J, Doe Run is allowed to propose alternative EMPs to fulfill its obligations under paragraph 166 of the Consent Decree.³⁷ Given the purpose that these EMPs are supposed to serve, members of the public are legitimate stakeholders in each project. Because the public has been and continues to be affected by the Defendants’ actions, the public should be able to comment on how those effects are mitigated.

• *Appendix J should provide a period of public notice and comment on all plans that Doe Run submits to implement the federally directed EMPs.*

³³ Consent Decree, Appendix J (“Environmental Mitigation Projects”), section I.A.

³⁴ *Id.*

³⁵ *See id.*, section II.

³⁶ *Id.* ¶ 168.

³⁷ *Id.* Appendix J, section I.A (“Defendants may submit to EPA additional projects to those listed herein within 6 months of the Effective Date of the Consent Decree.”).

- *Appendix J should provide a period of public notice and comment on any alternate projects that Doe Run submits to satisfy its obligation to perform EMPs.*

Response to Comment 18: Please also see the response to Comment 11. Paragraph 168 of the Consent Decree requires the Defendants to make all plans and reports prepared as required by Section XV (Environmental Mitigation Projects) of the Consent Decree publicly available without charge. Further, Appendix J requires that before undertaking any project, Doe Run must submit its plan to EPA, in consultation with MDNR, for review and approval. Therefore, EPA and MDNR will have the opportunity to review all environmental mitigation project plans to ensure that such plans are meeting the purpose and intent of the projects as set forth in Section I.A. of Appendix J. In addition, interested parties may submit comments to EPA on the plans and reports prepared by the Defendants, if they so choose. A formal public notice and comment process is not necessary.

Comment 19: *Doe Run should not be allowed to implement Environmental Mitigation Projects that primarily benefit Doe Run itself. (Consent Decree, Appendix J, Section VI.B.1)*

All of the EMPs that Doe Run is obligated to perform focus primarily on benefit to the public—with one exception: the installation of ground source heat pumps (“GSHP,” also Geothermal Heat Pumps, “GHP”). GHPs are one of the most energy efficient heating and cooling technologies available.³⁸ Installation of a GHP at a large residence or commercial building can reduce energy use and therefore sulfur dioxide, carbon dioxide and nitrogen oxide emissions, by a huge amount.³⁹ GHPs are also cost effective—along with reduced energy use, come reduced heating costs.⁴⁰ No matter where a GHP is installed, the environment will benefit. The issue here is whether Doe Run should also be allowed to benefit economically after imposing significant costs on the environment for decades.

Whereas other projects that involve beneficial installation stipulate a preference for installation on public equipment (such as the Clean Diesel Retrofit Project) the Ground Source Heat Pump Project has no such preference.⁴¹ The clean diesel retrofit can be installed on vehicles that serve Doe Run’s operations only if there is no suitable public fleet.⁴² This preference for

³⁸ EPA, *Manual on Environmental Issues Related to Geothermal Heat Pump Systems A-1* (1997).

³⁹ EPA, *Space Conditioning: The Next Frontier ES-5* (1993) (“Depending on location, emerging ground heat source pumps can reduce energy consumption and, correspondingly, emissions by 23-44% compared to the advanced air source heat pumps, and by 63-72% compared to electric resistance/standard air conditioning equipment.”)

⁴⁰ *Id.* at ES-4; see, e.g., Int’l Ground Source Heat Pump Ass’n, Lipscomb University Ezell Center Case Study 2, http://www.igshpa.okstate.edu/pdf_files/publications/lipscomb_cs.pdf (last visited Dec. 14, 2010) (paid for itself in 16 months) and Geothermal Heat Pump Consortium, Phillips 66 Service Station Prairie Village, Kansas 2 (1997), http://www.geoexchange.org/index.php?option=com_docman&task=doc_download&gid=4&Itemid=25 (last visited Dec. 14, 2010) (paid for itself in 2 years).

⁴¹ Consent Decree, Appendix J, section VI.B.1 (“Defendants may install GSHP on commercial buildings owned or operated by Defendants or Defendants may work with a public entity (e.g. city, county) to install GSHP on buildings owned or operated by that public entity.”)

⁴² *Id.*, section II.B.1 (“If Defendants cannot find a public fleet(s) appropriate for the Diesel Retrofit Project or

public benefit is appropriate in such mitigation projects. Installing a cost effective space conditioning technology is something that a business can be expected to do because it saves them money. Doe Run should not also get credit for doing so in this context.

- *Doe Run should be required to install GHPs on public buildings under the mandatory Ground Source Heat Pump project.*

Response to Comment 19: Please see the response to Comments 11 and 18.

II. ORAL COMMENTS AT PUBLIC MEETINGS

A. Comment 20 by Mr. Deron Gibbs, Iron County C-4 School District

At the public meeting held in Herculaneum, Missouri on December 9, 2010, a statement was made by Doe Run Resources Corporation (see Dec. 9, 2010 Community Meeting Transcript, p. 10 – 14) and one comment was received from Mr. Deron Gibbs from the Iron County C-4 School District. Mr. Gibbs asked a procedural question regarding how the civil penalty payment the State of Missouri receives is transmitted to the various schools. As part of the settlement, Doe Run is paying a \$7 million penalty. The State of Missouri receives \$3.5 million of this penalty. Mr. Gibbs' question is not addressed by the Consent Decree, however, in the interest of complete disclosure the comment is included in this Responsiveness Summary along with the response provided by a representative of the Missouri Attorney General's Office.

Comment 20 by Mr. Gibbs: *"I'm not sure the right people are here to answer this question. My question has to do with the funds that are going to different states. It says in the consent decree that the funds were payable to the State of Missouri and, in my case, Iron County School Fund. My question has to do with how this money will be sent to the counties. First of all, will it go through the State Education Funding Formula, in other words, money in is money out to those schools, or will this money be directly sent to the Iron County School Fund?*

And then the second question is once it gets to the counties, are there any recommendations as to who is going to have to say -- is it the County Commission or who is going to say this school gets this amount, this school gets that amount and so on and so forth?" (Community Meeting Tr., 14:5-21, Dec. 9, 2010.)

Response to Comment 20: The following response was provided at the meeting by Kara Valentine with the Missouri Attorney General's Office:

"My name is Kara Valentine. I'm with the Attorney General's Office in Jefferson City. . . . This is how I understand it will work. . . . The penalty payments will be made by Doe Run in installments -- I'm thinking it was three installments -- to the Attorney General's Office, and then the Attorney General's Office sends it directly to the appropriate county school fund, Iron

cannot use all of the Project Dollars on a public fleet, Defendants may spend Project Dollars to retrofit their contractor fleets and equipment.").

County School Fund in your case. The money goes in the school fund, and then it's the County Commission that decides how that money is going to be spent. The State is not involved in that decision all, that's the County Commission.

The only thing that we provide for in the consent decree is that the money goes to the school fund. That's in the Missouri Constitution. After that, it's up to the County to decide how to spend their money." (Community Meeting Tr., 14:24 – 15:19, Dec. 9, 2010.)

B. Comment 21 by the Honorable Bill Haggard, Mayor of Herculaneum, Missouri

As part of this global settlement between the United States, the State of Missouri and Doe Run, the EPA finalized two Administrative Orders on Consent between it and Doe Run. One was a new Administrative Order on Consent and the second was a modification to an existing Administrative Order on Consent. The new order, *In The Matter of The Doe Run Resources Corporation*, Docket No. RCRA-07-2010-0031, addresses residential properties in the town of Herculaneum, Missouri ("Order"). The modification to an existing Administrative Order on Consent, *In the Matter of the Doe Run Transportation and Haul Routes Southeastern Missouri*, Docket No. RCRA-07-2007-0008, covers the transportation of lead-bearing materials between Doe Run facilities in southeast Missouri ("Modification"). A public hearing was conducted on November 9, 2010 in Herculaneum, Missouri to receive comments on the Order and Modification. The hearing was recorded. During this public hearing one party, the Honorable Bill Haggard, Mayor of the City of Herculaneum, Missouri made a statement that raised a comment on the Consent Decree. In the interest of completeness, the comment by Mayor Haggard is included here along with a response. The comment is taken verbatim from the transcript of the November 9 public hearing on the RCRA Orders.

Comment 21 by Mayor Haggard: *"The City of Herculaneum also requests that we respectfully be allowed to have input in the decision-making process relating to the allocation of the funds for the community projects. The City has several projects that need attention and funding. Receipt of the funding would greatly support the City of Herculaneum in our efforts to recover from the loss of revenue brought about by the closing of the smelting division."* (Public Hearing Tr., 15:16 – 25, Nov. 9, 2010.)

Response to Comment 21: We believe this comment has to do with mitigation projects (community projects in the comment) being conducted by Doe Run under the Consent Decree (Appendix J). One aspect of the Consent Decree is a requirement that Doe Run perform \$2 million of mitigation projects. With the exception of requiring certain monetary limits on a few of the mitigation projects, EPA will not decide which mitigation projects (community projects) will be performed by Doe Run and Doe Run may propose projects not listed in Appendix J of the Consent Decree. Doe Run will submit a plan for the mitigation projects it will conduct under the Consent Decree. EPA will review the project proposal and approve the performance of the project if EPA believes the project is an appropriate mitigation project and within the scope and requirements of the Consent Decree. Paragraph 168 of the Consent Decree requires Doe Run to

make all plans and reports prepared as required by Section XV (Environmental Mitigation Projects) of the Consent Decree publicly available without charge. If the City has a project it believes would be a good candidate as a mitigation project, the City should discuss the project with Doe Run. The City is also encouraged to submit comments to EPA on the mitigation project plans and reports when Doe Run provides these documents to the public. For any project proposed by Doe Run that would affect the City of Herculaneum, the EPA will coordinate with the City as we move through the process of approving mitigation projects for Doe Run to perform.